

REMARKS

It is respectfully submitted that the finality of the Office Action was premature and it should be withdrawn. The Action makes rejections based on references being cited for the very first time, and therefore applicant had no opportunity to address them. The finality of the rejection cannot be justified as necessitated by amendments made by the applicant because no amendments were made in the last response. Withdrawal of the "final" status of the action is therefore respectfully requested.

It is respectfully submitted that the finality of the unity requirement was also premature and should be withdrawn. The Examiner has correctly pointed out the required two part analysis, and it is respectfully submitted that both parts have been satisfied. While the search and examination burden may be relevant to restriction practice, they are not relevant to unity practice as long as the two parts have been satisfied.

The first part of the analysis looks for the presence of commonality rather than differences. While the brief descriptions which were set forth in the requirement do identify differences between species, the very fact that there are different species always means that there will be differences. Focusing on the differences avoids the question of whether there is the same or corresponding technical feature rather than addressing that question. When, as here, there is only one independent claim and all other claims are in dependent form, the search for commonality must look to the independent claim because the 4th paragraph of 35 USC § 112 requires all dependent claims to include the independent claim features. In other words, the statute requires that there be the same technical feature in all claims where there is only one independent claim.

The second part of the analysis concerns whether the same technical feature distinguishes over the prior art. The prior art now being relied upon was first cited in the current Office Action. Because of this, it is respectfully submitted that the finality of the requirement is premature since the applicant had never been given any opportunity to show that the independent claim is patentable over the art now cited. In fact it is, as will be explained in detail when discussing the art rejections below.

Withdrawal of the finality of the unity requirement and reconsideration thereof is respectfully requested.

The rejection of claim 36 as being duplicative of claim 1 was correct and that claim has been canceled.

The rejection of claims 1, 3, 8, 16, 34 and 35 under 35 USC § 102 over Brosius is respectfully traversed.

It is respectfully submitted that the characterization of the U-shaped portions as being the "end" of the legs is not correct. The ends of an elongated body are the surface at either extremity of the continuous body. The segments numbered 4, 6, 7, and 8 in Brosius are part of one continuous body. The U-shaped portions 7 are located at about the middle of the continuous body. The ends of that body are at portion 5 and the portion of segment 8 above the "F" in the "Fig." of Fig. 3. Accordingly, the first ends of the two legs are not bendably connected to the writing member. Even if the U-shaped portions could be considered ends, and they cannot, they are not bendably connected to the writing member. As can be seen in both Figures 2 and 3, they are against the exterior surface of tubular body 1 and that body prevents them from being bendably connected to the writing member.

The only portion of the element in Brosius which is connected to and contacts the writing member is segment 6, and that is located closer to the mid-point of the "leg" than the ends of that element. Accordingly, an anticipation rejection based on this reference is untenable.

An obviousness rejection would also be untenable. The U-segment and continuing segment 8 are required in the Brosius in order for the holder to be attached to the wrist strap 9. Elimination of that feature would destroy Brosius' invention and make it unsuitable for its intended purpose.

In light of these major differences which render the claims patentable, it is not necessary to address any other assertion made in the Office Action. Nevertheless, it should be pointed out that two flat surfaces which may touch do not constitute a male-female connection, and the shaft of a pencil cannot be considered a male connector..

The rejection of claims 11, 33, 37 and 38 under 35 USC § 102 over Brosius in view of Kim is also respectfully traversed. Brosius have been considered above. Kim has been cited only to show features of these dependent claims and not to cure any deficiency in Brosius. As a result, the combination cannot render these claims obvious.

For the above reasons, the art rejections should be withdrawn, and the common technical feature is not disclosed in the art so that the unity rejection should also be withdrawn.

It is believed that the pending application is in condition for allowance and a

notice to that effect is respectfully solicited.

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Respectfully submitted,

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